IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 483 OF 2006.

Bapu Gangaram Kale. ... Appellant.

Versus.

Siodha Mahadu Kale and others. ... Respondents.

Ms.Varsha Palav for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 2nd May, 2006.

P.C.:

1. Heard the learned Advocate for the Appellant. The Appellant is the original Plaintiff. According to the case of the Plaintiff in the year 1976 as he was in need of money he sold the suit land to the Respondent No.1 (Defendant No.1) by a registered sale deed after accepting a sum of Rs.1000/- as consideration. According to the case of the Appellant/Plaintiff on the same day, the Respondent No.1 executed an agreement in favour of the Appellant/Plaintiff by which Respondent No.1 agreed to reconvey the said land to the Appellant within 10 years from the date of the sale deed. The Appellant/Plaintiff filed the suit for enforcing the said agreement to execute the reconveyance. The trial Court dismissed the suit and the Appellate Court confirmed the decree of the trial Court.

2. The learned Advocate for the Appellant submitted that even going by the findings of the Appellant Court, both the attesting witnesses to the agreement for

reconveyance were dead. She pointed out that the scribe was examined to prove the execution of the agreement. She also pointed out that it was the case of the Defendants that though consideration of Rs.4700/- was paid to the Appellant, the bond writer mentioned the consideration of only Rs.1000/- by practicing fraud. She submitted that no issue has been framed on the basis of the said plea of fraud and even a point for consideration is not framed on this aspect.

3. I have considered the submissions. The Courts below on appreciation of the oral and documentary evidence have held that the Appellant has failed to prove execution of the agreement of reconveyance by Respondent No.1. It is true that the Appellate Court has noted that both the attesting witnesses to the alleged agreement were dead. However, the Courts below have considered the other circumstances which are borne out by the record. The Courts have referred to the fact that though according to the case of the Appellant, the sale deed and the agreement were allegedly executed on one and the same day, the witnesses to the said deed have not signed the alleged agreement as attesting witnesses and different persons have signed the alleged agreement as attesting witnesses. The Appellate Court has believed the evidence of witness No.1 examined by the Respondent Shri Bhagwan Ghade who is the attesting witness to the sale deed. The Appellate Court held that

admittedly the said Bhagwan was present at the time of execution of the sale deed. The Appellate Court noted that the said Bhagwan has stated in clear terms that the talk regarding the reconveyance did not take place in his presence at the time of execution of the sale deed. The Appellate Court has also referred to the deposition of Ramchandra who is the son of the Appellant. The Appellate Court has noted that the son of the Appellant has stated in so many words that at the time of execution of the sale deed, talk regarding execution of reconveyance by Respondent No.1 in favour of the Appellant did not take place. After considering the oral and documentary evidence on record, the Appellate Court has confirmed the finding of the trial Court on the issue of execution of the agreement for reconveyance. The findings recorded in that behalf cannot be said to be perverse. No interference is called for in the Second Appeal. The Second Appeal is dismissed.

Judge.